Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Petition of	)	
Fibertech Networks, LLC	)	RM No. 11303
for a Rulemaking to Adopt	)	
Certain Standard Practices	)	
for Pole and Conduit Access	)	

TO: COMPETITION POLICY DIVISION, WIRELINE COMPETITION BUREAU

STATEMENT IN OPPOSITION OF AMEREN CORPORATION, FLORIDA POWER & LIGHT COMPANY, PACIFICORP, PUBLIC SERVICE ELECTRIC AND GAS COMPANY SOUTHERN CALIFORNIA EDISON COMPANY TAMPA ELECTRIC COMPANY AND VIRGINIA ELECTRIC AND POWER COMPANY

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SUMMARY

The Petition for Rulemaking filed by Fibertech Networks, LLC ("Fibertech"), which requests the adoption of rules mandating certain standard practices for pole and conduit access, should be denied by the Competition Policy Division, Wireline Competition Bureau of the Federal Communications Commission ("Commission").

The complaints raised by Fibertech are complaints against one or two ILECs, namely Verizon and SBC, not the Electric Companies or any electric utility. The limited scope of Fibertech's complaint warrants, if anything, examination in an adjudicative process, rather than a sweeping rulemaking. The Act respects the individual electric utility's need to specify safety, reliability and engineering standards. The Commission has thus refrained from proposing rules prescribing particular safety precautions, reliability practices and engineering standards. If the Commission has any jurisdiction with respect to safety, reliability and engineering practices related to the attachment of cable operator and CLEC facilities, the Commission should decline to exercise that jurisdiction and defer to well-developed existing state regulatory programs in order to avoid an unmanageable regulatory duality, as the Act does not grant the Commission jurisdiction over terms and conditions of attachment made by entities other than cable operators or CLECs. The unrestricted access Fibertech seeks with respect to electric utility infrastructure and infrastructure records raises serious national security concerns. Because the Commission is without authority to promulgate the rules requested by Fibertech, because the public interest is served by robust existing state regulatory programs, because the complaints lodged by Fibertech against Verizon and SBC are better suited to resolution by adjudication, and because the subject matter Fibertech brings forward has already been thoroughly addressed by the Commission, the Electric Companies urge the Commission to deny the Petition and decline to institute a rulemaking.

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AND
VIRGINIA ELECTRIC AND POWER COMPANY

Ameren Corporation, Florida Power & Light Company, PacifiCorp, Public Service Electric and Gas Company, Southern California Edison Company, Tampa Electric Company and Virginia Electric and Power Company (collectively referred to herein as the "Electric Companies"), by their counsel, and pursuant to Sections 1.4 and 1.405 of the Commission's Rules, 47 C.F.R. §§ 1.4, 1.405, hereby submit in response to the Competition Policy Division, Wireline Competition Bureau's *Public Notice* of December 14, 2005, DA No. 05-3182, the following Statement in Opposition to the Fibertech Networks, LLC ("Fibertech") Petition for Rulemaking ("Petition") requesting the adoption of rules mandating certain standard practices for pole and conduit access, which was filed on December 7, 2005.

The relief Fibertech seeks is inconsistent with the applicable statute, 47 U.S.C. § 224, Commission precedent, and important public policy. Accordingly, the Electric Companies urge the Commission to deny Fibertech's Petition and to decline to institute further proceedings.

INTRODUCTION

The Electric Companies represent a diverse group of electric utility companies operating across the United States. The following is a brief description of the Electric Companies.

Ameren Corporation, through its four operating subsidiaries, provides electric service to over 2.3 million customers throughout a 64,000 square mile service territory in Missouri and Illinois. Ameren has over 9,000 employees.

Florida Power & Light Company serves approximately 8 million people, or about one-half the state of Florida, with approximately 4.2 million customer accounts.

PacifiCorp serves more than 1.6 million customer accounts in six Western states, including Oregon, Utah, Wyoming, Idaho, Washington, and California, by way of approximately 43,850 miles of overhead distribution line. PacifiCorp has over 6,000 employees.

Public Service Electric and Gas Company serves over 2.1 million electric customer accounts in more than 300 communities in New Jersey, including nearly three-quarters of the state's population. Public Service Electric and Gas Company is New Jersey's oldest and largest regulated gas and electric delivery utility, with more than 150,000 miles of power transmission and distribution lines.

Southern California Edison Company serves more than 13 million people with over 4.6 million customer accounts in 430 cities and communities in 50,000 square miles of service area, encompassing eleven counties in central, coastal and Southern California. Southern California Edison has over 13,000 employees.

Tampa Electric Company serves more than 1.3 million people with over 625,000 customers in about 2,000 square miles of four Central Florida counties. Tampa Electric Company has over 2,300 employees.

Virginia Electric and Power Company provides service to over 2.3 million electricity customers in Virginia and North Carolina, who are reached by over 54,000 miles of distribution lines. Virginia Electric and Power Company has over 7,100 employees.

Combined, the Electric Companies provide service to over 17.7 million energy customer accounts throughout the Southern, Northeastern, Central and Western United States. In providing reliable electric service to their customers, the Electric Companies have invested in a vast network of electric distribution lines. These distribution lines run across poles and through conduit owned and operated by the Electric Companies or by incumbent local telephone exchange companies ("ILECs"). ILECs own and occupy poles and conduits for the deployment of their telephone networks.

The federal Pole Attachments Act of 1978 (the "Act"), codified at 47 U.S.C. § 224 as amended, requires that electric utilities and ILECs, as pole owners, provide access to their facilities to cable operators and telecommunications carriers (other than ILECs) at regulated rates so that these entities may deploy their networks without constructing duplicative poles or conduits. The Act further provides that the Commission shall regulate the terms and conditions upon which electric utilities and ILECs provide such access. The Act does not, however, confer upon the Commission jurisdiction to regulate electric utility construction practices or electric utility safety and reliability matters that are appropriately managed by the electric utility and regulated by the states. The Commission's past decisions have specifically declined to prescribe rules specifying particular construction practices and safety precautions. The Electric

Companies therefore submit that the recent Petition filed by Fibertech seeks the adoption of rules that would impermissibly exceed the scope of the Act and the authority of the Commission. Existing state regulation of these matters is effective. Therefore, the Electric Companies respectfully request that the Commission decline to institute the requested rulemaking.

ARGUMENT

I. The Allegations of Fibertech are complaints against certain ILECs not warranting a sweeping rulemaking.

Fibertech accuses certain ILECs of discriminatory practices on nearly every page of its Petition. Specifically, Fibertech complains about practices of two ILECs, Verizon, *passim*, and SBC, Petition at 29 n.27. In contrast, Fibertech makes no such claim against electric utility pole owners. Aside from the footnote mentioning SBC, Fibertech's Petition reads like a complaint addressed to "respondent" Verizon. The proper forum in which to resolve the discrimination alleged by Fibertech would be an adjudication between Fibertech and Verizon, before the Commission or a state commission with jurisdiction, not the sweeping rulemaking proposed by Fibertech.

The Commission should not allow allegations of discriminatory practices against an individual or limited set of pole owning entities to ensnare the entire universe of utility pole owners in yet another burdensome regulatory proceeding. Participating in rulemaking proceedings imposes costs that are ultimately borne by utility customers. Adjudicative processes require commitment of resources only by the parties to the dispute and those who may be directly affected. Adjudication is a more efficient way to resolve disputes between discrete parties.

The Commission has provided a liberal process for lodging such complaints in its rules at 47 C.F.R. § 1.1401, *et. seq.* These rules were expressly contemplated by the Act as the forum for

resolving complaints relating to rates, terms and conditions of attachment. *See* 47 U.S.C. § 224(b)(1); *see also* S. Rep. No. 95-580, at 21-22 (1977) (stating Congressional intent that the Commission develop rules "governing the form and content of complaints relating to CATV pole attachments, including requirements that the complaining party establish prima facie the unjustness and unreasonableness of any rate, term, or condition . . . .").

The Commission has repeatedly expressed the wisdom of addressing complaints of discrimination in case-by-case adjudication, rather than rulemaking. See, for example, *Consolidated Partial Order on Reconsideration*, 16 FCC Rcd 12103, at 12128 (FCC 2001), where the Commission declined to adopt separate and detailed regulations addressing complaints about rates, terms and conditions, and non-discriminatory access for non-traditional attachments, instead preferring a case-by-case determination, and *First Report and Order*, 68 F.C.C.2d 1585, at 1590 (FCC 1978), where the Commission preferred a case-by-case analysis of whether non-rate terms and conditions were just and reasonable over a prescriptive approach, and *Texas Cable and Telecomms. Ass'n v. GTE S.W., Inc.*, 17 FCC Rcd 6261 (2002), where in the course of denying intervention, the Commission stated that involvement by an electric utility not directly affected by the dispute "could only slow down a process that is designed to be as efficient as possible in accordance with our statutory mandate, and would thereby disrupt the orderly conduct of public business." 17 FCC Rcd 6261, at 6265. Similarly, the Commission should not be persuaded to address through rulemaking the particularized complaints Fibertech now lodges against Verizon.

In this case, Fibertech has not availed itself of the available adjudicative process. Fibertech has not provided evidence or even alleged wrongdoing by any member of the class of entities owning the vast majority of utility poles in the United States, the electric utilities.

Therefore, the Commission should not take the over-reactive course proposed by Fibertech. To do so would foist dispute resolution costs onto the customers of the entities that bear no responsibility for the alleged activities and multiply those costs many times over what is reasonably necessary to resolve the matter.

II. The Commission should not attempt to regulate safety, reliability and engineering standards and practices of electric utilities.

Under federal law, the electric utility's responsibility for determining safety, reliability and engineering standards and practices is preserved. Fibertech is asking this Commission to replace the engineering judgment and experience of seasoned electric utility personnel with an over-reaching one-size-fits-all regulatory solution, in contravention of federal law. Further, Fibertech is asking this Commission to refuse to respect the substantial body of state law already in place. For the reasons that follow, the Commission should do neither.

A. The electric utility is responsible for safety, reliability and engineering standards and practices.

The Act recognizes the role of the electric utility in determining safety, reliability and engineering standards and practices. Section 224(f)(1) requires a utility to allow cable television providers and telecommunications carriers (other than ILECs) nondiscriminatory access to poles and conduits. However, section 224(f)(2) provides that an electric utility may deny a cable television provider or a telecommunications carrier access on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.

Each electric utility has its own safety, reliability and engineering requirements, with good reason. Electric utilities have evolved over the last one-hundred years from individual industrial establishments selling power to light a few blocks in the business core of small towns across the land, to three vast North American Electric Reliability Council (NERC)

interconnections encompassing nearly the entire North American continent. There are over 3,170 electric utilities, including approximately 239 investor owned electric utilities, in the United States. *See* Electric Power Industry Overview, *at* http://www.eia.doe.gov/cneaf/electricity/page/prim2/toc2.html. These utilities work together in a real-time ballet of precise electrical engineering operations, ensuring that the lights stay on and the power is available, all day, every day. Each of these utilities faces an endless array of ever-changing operating circumstances due to climate, severe weather, terrain, loading, source of supply, economic resources, and even the aesthetic preferences of the community, among other things. These differing circumstances dictate differing primary voltages, standard conductor sizes, pole loading zones, standard construction materials, and a host of other variances. As a result, each electric utility has its own unique safety, reliability and engineering requirements.

The relief sought by Fibertech includes this Commission prescribing rules that mandate certain practices affecting safety, reliability and engineering standards with respect to electric utility infrastructure. This is not an appropriate role for the Commission. The Act does not grant the Commission jurisdiction to determine what are reasonable and necessary safety, reliability and engineering standards. The Act leaves this role to the electric utility because Congress understood that the circumstances in which the electric utility operates require flexibility and that the electric utility is the appropriate entity to exercise that flexibility in determining safety, reliability and engineering standards.

A helpful comparison can be made to the Federal Energy Regulatory Commission (FERC) and its authority over bulk power transmission systems. Among other things, the Federal Power Act provides the FERC with authority to determine whether the rates or practices of a public utility selling wholesale electric power or providing electric transmission services in interstate

commerce are just and reasonable. *See, e.g.*, 16 U.S.C. 824e. The FERC has not interpreted this authority over rates and practices to equate with the authority to dictate particular safety, reliability or engineering standards or practices. The extent of the FERC's authority to influence such matters was given a large boost in the Energy Policy Act of 2005, which gives the FERC approval authority over the establishment of an Electric Reliability Organization and its work product. Section 1211, Pub. Law No. 109-058 (2005). This Commission does not share these powers with the FERC or have similar authority over electric utility distribution systems.

B. The Commission's proper role to is to ensure non-discriminatory access.

Traditionally, this Commission has not regulated safety, reliability and engineering standards and practices as "rates, terms or conditions" of pole attachments. *See, e.g., Order on Reconsideration*, 14 FCC Rcd 18049 (1999) (rejecting the suggestion that the Commission should specify minimum skills and performance requirements for technicians). Instead, this Commission has looked at whether these safety, reliability and engineering standards and practices have been implemented in a non-discriminatory fashion. *See, e.g., Cavalier Tel., LLC v. Virginia Elec. & Power Co.*, 15 FCC Rcd 9563, at 9572, *vacated by*17 FCC Rcd 24414 (2000) (examining alleged **discriminatory applications** of extension arm and boxing prohibitions, rather than whether these techniques were safe or sound).

Conceivably, the Commission could have a role in determining whether an electric utility has applied its safety, reliability and engineering standards and practices in a non-discriminatory manner with respect to pole attachments made by Fibertech. That would involve a determination of fact as to whether the electric utility discriminated in applying those standards and practices, which would be better suited for an adjudicative process than a sweeping rulemaking. Of course, that adjudication would require a complaint alleging discriminatory practices by an electric utility. In this case, Fibertech has not made such an allegation with respect to any electric utility.

C. The relief sought by Fibertech would constitute federal regulation of the safety, reliability and engineering standards and practices of electric utilities.

Fibertech requests that the Commission bar all pole owners, including both ILECs and electric utilities, from engaging in eight certain practices, as follows:

(1) Prohibition of boxing and extension arms;
(2) Performance outside absolute timelines for field surveys and make-ready work;
(3) Precluding cable or telecommunications contractors from performing work normally performed by electric utility personnel or contractors;
(4) Requiring prior approval for installation of unsupported and non-through-bolted attachments;
(5) Precluding non-electric utility personnel from entering electric manholes for surveys and precluding non-electric utility personnel from unfettered access to critical infrastructure records;
(6) Failing to provide supporting documentation for certain fees;
(7) Precluding non-electric utility personnel from unsupervised access to electric manholes to perform unspecified "work"; and
(8) Precluding a commingling of non-ILEC and ILEC cables and use of communications innerduct interstices.

See Petition at App. A, Proposed Rule Changes. These proposed prohibitions relate almost entirely to matters of safety, reliability and engineering practices.

Note that the preface of Fibertech's proposed new 47 C.F.R. § 1.1403(f) contains a blanket prohibition on the above practices. *See* Petition at App. A. It does not simply state that it is unlawful for a utility to engage in these practices in a discriminatory manner, favoring one cable operator or telecommunications carrier over the other. Of course, it would not need to. The law already provides for nondiscriminatory access. *See* 47 C.F.R. § 1.1403(a) (stating "A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.").

Instead, Fibertech proposes direct federal regulation of safety, reliability and engineering standards and practices. Fibertech's rule could preclude a case-by-case determination of, for instance, whether certain work should not be performed by certain personnel. In order for the

Commission to impose the rule sought by Fibertech, the Commission would have to determine in advance, for example, that anytime a utility has allowed an extension arm even once, even many years ago, that such a practice is safe and sound throughout the utility infrastructure. *See* Petition at App. A, *proposed* 47 C.F.R. § 1.1403(f)(1)(iii) (imposing obligation to allow extension arms and boxing where these have been previously used). Not only is Fibertech asking the Commission to plow new ground in regulation of safety, reliability and engineering standards and practices, Fibertech is asking them to do so in a fashion that would prefer non-discrimination to safety and engineering integrity. The Commission presently takes a better approach, focusing on ensuring non-discriminatory applications of such criteria, rather than attempting to create standards itself.

D. The States already properly regulate electric utility safety, reliability, and engineering.

The Electric Companies provide service in twelve states across the United States. Each of those states regulates safety, reliability and engineering standards and practices of electric utilities. Exhibit A hereto is titled "Table of Electric Companies' States and Safety, Reliability and Construction Standards Regulation and Certification Status." This table provides a citation to the state administrative rules, or statutory provisions in two cases, providing standards for electric utility safety and engineering practices. The text of each of those materials is appended to Exhibit A (with the exception of the California materials, due to size, which can be viewed at < http://www.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/52593.pdf >). Exhibit A also provides a cross reference to each state's certification status with respect to regulation of pole attachment rates, terms and conditions. *See Public Notice* of February 21, 1992, DA No. 92-201, 7 FCC Rcd 1498 (providing an unofficial list of states that have certified that they regulate pole attachments).

Exhibit A and the attachments thereto demonstrate the broad scope of state commission regulation of electric utility safety, reliability and engineering standards and practices. In some cases, such as California and to a lesser extent Oregon, the guidance codified in administrative rules is voluminous. In all of the Electric Companies' states except California, the states' administrative rules, orders or statutes adopt the National Electrical Safety Code. Moreover, all of these states regulate electric utility safety, reliability and engineering standards and practices through adjudicative and policy making processes, including complaint proceedings, investigations, general orders, policy statements, rate cases, and other mechanisms. State licensing statutes for engineers may govern the tasks certain employees are or are not permitted to perform. *See, e.g.*, Fla. Stat. ch. 471.003. Exhibit A merely lists the most basic starting point in a catalog of state regulation in this area. Each state has its own body of administrative orders providing guidance in addition to the administrative rules and statutes and each state has personnel attending to these issues.

Fibertech proposes that the Commission replace these state regulations with a one-size-fits-all rule. This proposal is unfounded in that the states are effectively managing electric utility safety, reliability and engineering standards and practices. This proposal is inappropriate because the states have a legal right to do so.

E. The existing state regulation of safety, reliability and engineering standards and practices reverse-preempts Commission jurisdiction.

State regulation of electric utility safety, reliability and engineering standards and practices is prolific. It extends well beyond the set of states that have officially reverse-preempted federal jurisdiction over cable television and telecommunications attachments. The states have a well-defined interest in ensuring the safety and well being of their citizens. However, for the sake of argument, if safety, reliability and engineering standards and practices

were considered "rates, terms or conditions" under the Act, then Commission regulation of those standards and practices should largely be reverse-preempted by state regulation.

Section 224(c)(1) states that "Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f) of this section, for pole attachments in any case where such matters are regulated by a State." *See also* S. Rep. No. 95-580, at 16 (1977) (stating Congressional belief that CATV pole attachment matters are inherently local in nature, and that federal regulation is necessary in this nascent field only due to an absence of local regulation). States need only certify that they have instituted rules pertaining to rates, terms and conditions. State regulation of safety, reliability and engineering standards and practices is presumed under the Act. As demonstrated above, state regulation of safety, reliability and engineering standards and practices related to utility infrastructure is now comprehensive. Thus, Commission regulation of these matters should be considered reverse-preempted, if not beyond the scope of "rates, terms, and conditions."

The Commission should acknowledge that safety, reliability and engineering standards and practices have not historically been viewed as "rates, terms or conditions" of attachment. See *Memorandum Opinion and Second Report and Order (Second Report)*, 72 F.C.C.2d 59 (1979), where the Commission stated, "The legislative history also urges that the reasonableness of terms and conditions of pole space leasing agreements be judged with respect to the **compensation** received by the utility." *Id.* at 74 (emphasis supplied). States that have not yet certified jurisdiction to the Commission over cable television and telecommunications attachments may be inclined to do so in the future if the Commission proceeds with the rulemaking requested by Fibertech. While many factors can literally affect the "conditions" of

attachment, the Commission should continue to use judicious restraint in interpreting what conditions are within its purview as part of the "rates, terms, and conditions" of attachment.

F. The Commission should refrain from attempting to regulate safety, reliability and engineering standards and practices to avoid dual regulatory schemes.

Commission implementation of rules governing safety, reliability and engineering standards and practices would create an unworkable dual regulatory structure. To the extent the Commission has any jurisdiction over safety, reliability and engineering standards and practices, arguably as "rates, terms or conditions" of attachment, the Commission's jurisdiction would extend only to safety, reliability and engineering standards and practices related to attachments made by cable television providers and telecommunications carriers, not including ILECs. This would create in many jurisdictions conflict between state and federal regulations. Some attachments might be governed by federal safety, reliability and engineering regulations, while others would be subject to state regulation. This is a recipe for a state/federal jurisdictional showdown rather than safe, reliable and efficient utility operations. As a matter of federalism and good and practical public policy, should the Commission believe it has jurisdiction over safety, reliability and engineering standards and practices, the Commission should embrace the comprehensive state regulation already in place and refrain from promulgating rules. This is consistent with the Commission's statement in *Order on Reconsideration*, 14 FCC Rcd 18049 (1999), where the Commission stated that "the Commission will presume state and local requirements affecting pole attachments to be reasonable, and are entitled deference even if the state has not sought to preempt federal regulations under section 224(c)." *Id*. at 18052. This will maintain an effective regulatory structure.

G. Congress has directed federal agencies to safeguard critical infrastructure information that could be widely disseminated under the Fibertech proposal.

Congress enacted the Critical Infrastructure Information Act of 2002 as Subtitle B of Title II of the Homeland Security Act of 2002. 6 U.S.C. § 131, *et. seq.* The Critical Infrastructure Information Act was intended to ensure that agencies do not facilitate terrorist attacks by making critical infrastructure information available to terrorists. On December 17, 2003, President George W. Bush issued Homeland Security Presidential Directive/Hspd-7, which directed the Department of Homeland Security and other federal agencies to protect and secure critical infrastructure from terrorist attack. The FERC has since stated that, "Following the September 11, 2001, terrorist events, security [] means ensuring that [electric] infrastructure is safe from attack or sabotage." *See* FY 2005 *Congressional Performance Budget Request*, at 24, *available at* http://www.ferc.gov/about/strat-docs/FY05-Budg.pdf.

The FERC has defined critical energy infrastructure information (CEII) to include, among other things, information about electric distribution and transmission facilities that could be useful to a person planning an attack on critical infrastructure. *See* 18 C.F.R. § 388.113(c)(1). In Order No. 643, 104 FERC ¶ 61,107 (2003), the FERC put in place procedures that allow an electric utility to prevent disclosure of certain CEII that would otherwise be required to be disclosed to private parties under FERC disclosure regulations. In the event a third party disputes the withholding of such information, the FERC's "CEII Coordinator will determine if the information is CEII, and, if it is, whether to release the CEII to the requester. The CEII Coordinator will balance the requester's need for the information against the sensitivity of the information." *See* 18 C.F.R. § 388.113(d)(2)(ii). The CEII coordinator can order disclosure, conditional disclosure under a form of confidentiality agreement, or nondisclosure. *Id.*

The Electric Companies are gravely concerned that Fibertech's proposed Section 1.1403(f)(5), which would appear to allow third parties unrestricted access to electric utility

conduit records, completely disregards the potential that such records have to facilitate terrorism, if put into the wrong hands. The FERC has recognized that, in light of security issues, electric utilities may be best situated to determine the records that should be disclosed in response to third party requests for information. *See* Order No. 643. slip op. *at* ¶ 16. Where disclosure is mandated by rule, the FERC has had the wisdom to dedicate FERC personnel to decide any disputes, and that decision-maker has expertise and broad latitude to consider potential security issues and prevent disclosure if appropriate.

Under the Fibertech proposal, third parties rummaging through electric utility conduit records could present a serious security risk. The Fibertech proposal could very well create a medium to transmit CEII directly to the wrong hands. Under the Fibertech proposal, the electric utility appears to have no power to prevent this. Worse, the Fibertech proposal could provide dangerous parties with unrestricted access to the actual critical infrastructure. *See proposed* 47 C.F.R. § 1.1403(f)(5)(a) (allowing third parties to perform electric manhole surveys). Accordingly, the Commission should reject the Fibertech proposal.

H. Certain relief sought by Fibertech would constitute an unlawful capacity expansion requirement.

Fibertech explains in its Petition that both extension arms and boxing are techniques used when all of the available capacity of a pole is used up. Fibertech states that the key reason for using extension arms and boxing is to avoid pole replacement or costly make-ready work. *See* Petition at 13, 16. These shortcuts are designed to expand capacity for attachments that cannot be made in the normal communications space on a pole.

The Act clearly does not require utilities to expand capacity. Section 224(f) states that an electric utility may deny access where there is insufficient capacity. The United States Court of Appeals for the Eleventh Circuit has held that the Commission cannot mandate capacity

expansion, as such a mandate would be inconsistent with the plain meaning of the statute. *Southern Co. v. FCC*, 293 F.3d 1338, 1346-7 (11th Cir. 2002). Therefore, the rules sought by Fibertech mandating extension arms and boxing are not within the Commission's statutory authority to promulgate.

III. The Commission has already addressed each of the issues raised by Fibertech.

The Commission has already made specific pronouncements as to non-discriminatory and just and reasonable application of the practices Fibertech now seeks to address through rulemaking. The Commission's settled approach to addressing the type of issues raised by Fibertech is to address complaints of discrimination or unjust or unreasonable practices on a case-by-case basis. In *Cavalier*, the Commission precluded discriminatory prohibition of extension arms and boxing, but did not determine these practices should be allowed in every case where a utility has one or more extension arms or boxed poles on its system. 15 FCC Rcd at 9572. In *Bell South*, 13 FCC Rcd 20599 (1998), the Commission was satisfied that Bell South provided non-discriminatory access to poles and conduits by committing "to inform competitive LECs of the precise date when any necessary make-ready work can be completed, and to complete the necessary provisioning work 'in a nondiscriminatory manner . . . .'" *Id.* at 20709. In the *Local Competition Order*, 11 FCC Rcd 15499, at 16083 (1996), and in the *Local Competition Reconsideration Order*, 14 FCC Rcd 18049, at 18079 (1999), the Commission made clear that utilities may apply non-discriminatory training qualifications to non-utility personnel working in proximity to electric lines in relation to pole attachments. The Commission has made clear that both recurring and non-recurring incremental costs may be recovered through fees, so long as those costs are not also included in annual rental charges, and the Commission will examine this in individual cases. *See Texas Cable & Telecomms. Assoc. v. GTE S.W.*, 14 FCC Rcd 2975, 2985 (1999) (stating, "We will look closely at make-ready and

other charges to ensure that there is no double recovery for expenses for which the utility has been reimbursed through the annual fee."); *Texas Cable & Telecomms. Assoc. v. Entergy,* 14 FCC Rcd 9138, at 9139-40 (1999). Finally, at least in the case of its interconnection policy, the Commission has made clear that it will require efficient use of communications conduit to promote telecommunications competition. *See In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, 9 FCC Rcd 5154, at 5179 (1994) (exercising jurisdiction over telecommunications facilities and requiring fiber instead of copper or coaxial "in order to promote efficient use of available conduit and riser space and thereby facilitate access to central office interconnection by the greatest number of potential interconnectors, but allowing interconnection of copper or coaxial in **specific cases** on approval by the Common Carrier Bureau") (emphasis supplied).

Thus, Fibertech's issues proposed for rulemaking are already subject to specific Commission guidance. Fibertech complains that the Commission's preference for a case-by-case approach to addressing the myriad of pole attachment rate, terms and conditions issues that have been raised since 1978 offers pole owners an opportunity to relitigate settled issues in redundant litigation. Petition at 5. A thoughtful review of Commission decisions yields no serial cases repeatedly addressing the same issues. Fibertech would prefer the Commission view pole owning utilities as intransigents, unyielding to the Commission's authority. Such is not the case and the Commission has acknowledged this from time to time. *See, e.g., First Report and Order*, 68 F.C.C.2d 1585, at 1601 (1978) (stating, "Colony's perspective seems to portray the typical utility as a generally uncooperative entity requiring substantial admonition to comply with our orders. We do not share this view.") Conversely, instead of accepting existing Commission determinations, Fibertech challenges the abundant guidance the Commission has already

provided. Fibertech complains further that the Commission's guidance "can be difficult to locate," *see* Petition at 5, and appears to desire a rulemaking in part to develop a practice manual for its counsel.

CONCLUSION

The complaints raised by Fibertech are complaints against one or two ILECs, namely Verizon and SBC, not the Electric Companies or any electric utility. The limited scope of Fibertech's complaint warrants, if anything, examination in an adjudicative process, rather than a sweeping rulemaking. The Act respects the individual electric utility's need to specify safety, reliability and engineering standards. The Commission has thus refrained from proposing rules prescribing particular safety precautions, reliability practices and engineering standards. If the Commission has any jurisdiction with respect to safety, reliability and engineering practices related to the attachment of cable operator and CLEC facilities, the Commission should decline to exercise that jurisdiction and defer to well-developed existing state regulatory programs in order to avoid an unmanageable regulatory duality, as the Act does not grant the Commission jurisdiction over terms and conditions of attachment made by entities other than cable operators or CLECs. The unrestricted access Fibertech seeks with respect to electric utility infrastructure and infrastructure records raises serious national security concerns. Because the Commission is without authority to promulgate the rules requested by Fibertech, because the public interest is served by robust existing state regulatory programs, because the complaints lodged by Fibertech against Verizon and SBC are better suited to resolution by adjudication, and because the subject matter Fibertech brings forward has already been thoroughly addressed by the Commission, the Commission should deny the Petition of Fibertech and decline to institute the rulemaking requested.

Respectfully submitted,

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Filed: January 30, 2006

Exhibit A

Table of Electric Companies' States; Codified Safety, Reliability and Construction Standards Regulations; and Certification Status

No.	State	Rule Citation	Certified to the FCC re: Pole Attachment Regulation
1	California	CPUC General Order No. 95	yes
2	Florida	Fla. Admin. Code § 25-6.0345	
3	Idaho	IDAPA § 31.11.01, Rule 101	yes
4	Illinois	Ill. Admin. Code §§ 305.10-305.130	yes
5	Missouri	Mo. Code Reg. tit. 4, § 240-18.010	
6	New Jersey	N.J. Admin. Code tit. 14, § 5-1.1	yes
7	North Carolina	N.C. Admin. Code tit. 4, § 11.R8-26	
8	Oregon	Or. Admin. R. 860-024-0000 through 0050	yes
9	Utah	Utah Admin. Code § 746-310-5	yes
10	Virginia	Va. Admin. Code tit. 20, § 5-325-30 Va. Code § 56-257 Va. Code § 56-46.2	
11	Washington	Wa. Admin. Code § 480-120-402	yes
12	Wyoming	Wyo. Stat. § 37-3-114 Wyo. Stat. § 37-3-301	

(5) A copy of the rules contained herein, as promulgated and adopted by the Commission, also a copy of the rate schedules and rules and regulations of the utility as filed with the Commission, shall be kept on file in the local commercial offices of the utility for inspection by its customers. A customer shall, upon request, be furnished a copy of the rate schedule applicable to his service.

Specific Authority 366.05(1) FS. Law Implemented 366.03, 366.06 FS. History–Amended 7-29-69, Formerly 25-6.33.

25-6.034 Standard of Construction.

(1) The facilities of the utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(2) The Commission has reviewed the American National Standard Code for Electricity Metering, 6th edition, ANSI C-12, 1975, and the American National Standard Requirements, Terminology and Test Code for Instrument Transformers, ANSI-57.13, and has found them to contain reasonable standards of good practice. A utility that is in compliance with the applicable provisions of these publications, and any variations approved by the Commission, shall be deemed by the Commission to have facilities constructed and installed in accordance with generally accepted engineering practices.

Specific Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2)(c), (5), 366.05(1) FS. History–Amended 7-29-69, 12-20-82, Formerly 25-6.34.

25-6.0345 Safety Standards for Construction of New Transmission and Distribution Facilities.

(1) In compliance with Section 366.04(6)(b), F.S., 1991, the Commission adopts and incorporates by reference the 2002 edition of the National Electrical Safety Code (ANSI C-2), published August 1, 2001, as the applicable safety standards for transmission and distribution facilities subject to the Commission's safety jurisdiction. Each public electric utility, rural electric cooperative, and municipal electric system shall comply with the standards in these provisions. Standards contained in the 2002 edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.

(2) Each public electric utility, rural electric cooperative and municipal electric utility shall report all completed electric work orders, whether completed by the utility or one of its contractors, at the end of each quarter of the year. The report shall be filed with the Director of the Commission's Division of Auditing and Safety no later than the 30th working day after the last day of the reporting quarter, and shall contain, at a minimum, the following information for each work order:

(a) Work order number/project/job;

(b) Brief title; and

(c) Estimated cost in dollars, rounded to nearest thousand.

(3) The quarterly report shall be filed in standard DBase or compatible format, DOS ASCII text, or hard copy, as follows:

(a) DBase Format

	Field Name	Field Type	Digits
1.	Work orders	Character	20
2.	Brief title	Character	30
3.	Cost	Numeric	8
4.	Location	Character	50
5.	Kv	Numeric	5
6.	Contiguous	Character	1

(b) DOS ASCII Text.

1. Columns shall be the same type and in the same order as listed under Field Names above.
2. A comma (,) shall be placed between data fields.
3. Character data fields shall be placed between quotation marks (". . .").
4. Numeric data fields shall be right justified.
5. Blank spaces shall be used to fill the data fields to the indicated number of digits.

(c) Hard Copy.

The following format is preferred, but not required:
Completed Electrical Work Orders For PSC Inspection

Work Order	Brief Title	Estimated Cost	Location	Kv Rating	Contiguous (y/n)

(4) In its quarterly report, each utility shall identify all transmission and distribution facilities subject to the Commission's safety jurisdiction, and shall certify to the Commission that they meet or exceed the applicable standards. Compliance inspections by the Commission shall be made on a random basis or as appropriate.

(5) As soon as practicable, but by the end of the next business day after it learns of the occurrence, each public utility, rural electric cooperative, and municipal electric utility shall (without admitting liability) report to the Commission any accident occurring in connection with any part of its transmission or distribution facilities which:

(a) Involves death or injury requiring hospitalization of nonutility persons; or

(b) Is significant from a safety standpoint in the judgment of the utility even though it is not required by paragraph (a).

(6) Each public utility, rural electric cooperative, and municipal electric utility shall (without admitting liability) report each accident or malfunction, occurring in connection with any part of its transmission or distribution facilities, to the Commission within 30 days after it learns of the occurrence, provided the accident or malfunction:

(a) Involves damage to the property of others in an amount in excess of $5000; or

(b) Causes significant damage in the judgment of the utility to the utility's facilities.

(7) Unless requested by the Commission, reports are not required with respect to personal injury, death, or property damage resulting from vehicles striking poles or other utility property.

Specific Authority 350.127(2) FS. Law Implemented 366.04(2)(f), (6) FS. History–New 8-13-87, Amended 2-18-90, 11-10-93, 8-17-97, 7-16-02.

25-6.035 Adequacy of Resources.

(1) Each electric utility shall maintain sufficient generating capacity, supplemented by regularly available generating and non-generating resources, in order to meet all reasonable demands for service and provide a reasonable reserve for emergencies. Each electric utility shall also coordinate the sharing of energy reserves with other electric utilities in Peninsular Florida. To achieve an equitable sharing of energy reserves, Peninsular Florida utilities shall be required to maintain, at a minimum, a 15% planned reserve margin. The planned and operating reserve margin standards established herein are intended to maintain an equitable sharing of energy reserves, not to set a prudent level of reserves for long-term planning or reliability purposes. The planned reserve margin for each utility shall be calculated as follows:

RM = [(C - L)/L]*100 where;

"RM" – Is defined as the utility's percent planned reserve margin;

"C" – Is defined as the aggregate sum of the rated dependable peak-hour capabilities of the resources that are expected to be available at the time of the utility's annual peak; and

"L" – Is defined as the expected firm peak load of the system for which reserves are required.

The following shall be utilized as the operating reserve standard for Peninsular Florida's utilities: operating reserves shall be maintained by the combined Peninsular Florida system at a value equal to or greater than the loss of generation that would result from the most severe single generating unit contingency. The operating reserves shall be allocated among the utilities in proportion to each control area's peak hour net energy for load for the preceding year, and the summer gross Florida Reliability Coordinating Council (FRCC) capability of its largest unit or ownership share of a joint unit, whichever is greater. Fifty percent shall be allocated on the basis of peak hour net energy for load and fifty percent on the basis of the summer gross FRCC capability of the largest unit. Operating reserves shall be fully available within fifteen minutes. At least 25% of the operating reserves shall be in the form of spinning reserves which are automatically responsive to a frequency deviation from normal.

(2) Treatment of Purchased Power. Only firm purchase power agreements may be included as a resource for purposes of calculating a planned or operating reserve margin. A utility may petition for waiver of this requirement based on the very high availability of specific non-firm purchases.

(3) Treatment of Shared Generating Units. Only the utility which has first call on the generating unit may count the unit towards its planned or operating reserve margin. A utility has first call on a unit if the unit is available and the utility has the contractual right to dispatch the unit to meet its native load and other firm contractual commitments before any other party to the unit's sharing arrangement. A utility may petition the Commission for approval of other methods demonstrating equivalent reliability on a case by case basis.

(4) Treatment of Non-Firm Load. If non-firm load (i.e., customers receiving service under load management, interruptible, curtailable, or similar tariffs) is relied upon by a utility when calculating its planned or operating reserves, the utility shall be required to make such reserves available to maintain the firm service requirements of other utilities.

(5) Buy-through Power for Interruptible Customers. Interruption of service to non-firm customers is not an emergency. As such, a utility shall not be required to provide buy-through power for another utility's interruptible customers under obligatory emergency interchange schedules.

Specific Authority 366.05(1) FS. Law Implemented 366.03, 366.04(2)(c), (5), 366.055 FS. History–New 7-29-69, Formerly 25-6.35, Amended 9-5-96, 5-29-01.

IDAPA 31
TITLE 11
CHAPTER 01
31.11.01 - SAFETY AND ACCIDENT REPORTING RULES FOR UTILITIES REGULATED BY IDAHO PUBLIC UTILITIES COMMISSION

TABLE OF CONTENTS

RULES 0 THROUGH 100. INTRODUCTION

000. LEGAL AUTHORITY (Rule 0).

These rules adopting by reference national safety codes and requiring reporting of accidents are adopted under the general authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code, and under the specific authority of Sections 61-515 and 61-517, Idaho Code. (4-1-98)

[Amended, G.O. 194.]

001. TITLE AND SCOPE (Rule 1).

The name of this chapter is "Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission". This chapter has the following scope: All electric and telephone corporations subject to the regulation of the Idaho Public Utilities Commission are required to abide by the safety regulations adopted in Rule 101; all gas and pipeline corporations are required to abide by the safety regulations adopted in Rules 201 through 203; and all electrical, gas, pipeline, telephone, and water corporations are required to abide by the safety and accident reporting requirements of Rules 301 and 302. (7-1-93)

Cross Reference: Rules 101, 201, 202, 203, 301, 302.

002. WRITTEN INTERPRETATIONS--AGENCY GUIDELINES (Rule 2).

For rulemakings conducted before July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the order of proposed rulemaking and review of comments submitted in the order adopting these rules are maintained in the files of the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. The Commission Secretary may be contacted in writing at the Idaho Public Utilities Commission, PO Box 83720, Boise, Idaho 83720-0074, or may be reached by telephone at (208) 334-0300. For rulemakings conducted after July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking decision adopting these rules are published in the issues of the Idaho Administrative Bulletin proposing or adopting the rules. (7-1-93)

003. ADMINISTRATIVE APPEALS (Rule 3).

Any person requesting a waiver from any provision of these safety rules or accident reporting rules may petition the Idaho Public Utilities Commission for a waiver pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 et seq. (4-1-98)

[Amended, G.O. 194.]

Cross Reference: IDAPA 31.01.01.000

004. PUBLIC RECORDS ACT COMPLIANCE (Rule 4).

Notes of telephone reports required by Rule 301 and written reports required by Rule 302 are public records subject to inspection, examination and copying. Further investigative reports by

the Commission or the Commission Staff are investigatory records exempt from disclosure. See Sections 9-337(4) and 9-340B, Idaho Code. Reports required by these rules and the results of further investigations by the Commission are by statute prohibited from admission into evidence in any action for damages based on or arising out of the loss of life or injury to the person or property. See Section 61-517, Idaho Code. (4-5-00)

[Amended, G.O.194; amended, G.O. 201.]

Statutory Reference: *Idaho Code* §§ 9-337(4), 9-340(2); 61-517.

Cross Reference: Rules 301, 302.

005. DEFINITIONS (Rule 5).

The terms "electrical corporation," "gas corporation," "pipeline corporation," "telephone corporation," and "water corporation" have the meanings given to them by statute in Chapter 1, Title 61, Idaho Code, orders of the Idaho Public Utilities Commission, and decisions of the Supreme Court of Idaho construing these statutes. (7-1-93)

006. CITATION (Rule 6).

The official citation of these rules is IDAPA 31.11.01.000 et seq. For example, this rule is cited as IDAPA 31.11.01.006. In documents submitted to the Commission or issued by the Commission however, these rules may be cited by their short title Safety and Accident Reporting Rules (SARR) and the parenthetical rule number. For example, this rule may be cited as SARR 6. (4-1-98)

[Amended, G.O. 194.]

007. EFFECTIVE DATE--HISTORY OF RULES (Rule 7).

The predecessors to these rules (in particular earlier adoptions by reference of previous versions of safety codes) have been adopted many times over the years. The history of these rules preceding the initiation of the publishing of the Idaho Administrative Bulletin and the Idaho Administrative Code is available from the Commission Secretary. (4-1-98)

[Amended, G.O. 194.]

008. INCORPORATED BY REFERENCE – CODE OF FEDERAL REGULATIONS (Rule 8).

Rules 101, 201, 202, and 203 incorporate by reference various national safety codes and federal gas pipeline safety regulations. Each applicable rule identifies the issuing entity for each code or regulation and indicates where the incorporated materials may be obtained. Incorporated materials are also available for inspection and copying at the offices of the Idaho Public Utilities Commission and the Idaho State Law Library. (3-30-01)

[Adopted, G.O. 206.]

Cross Reference: Rules 101, 201, 202, 203

009.-- 100. (RESERVED).

RULES 101 THROUGH 200 – ELECTRIC AND TELEPHONE UTILITIES

101. NATIONAL ELECTRICAL SAFETY CODE (NESC) (Rule 101).

The Commission adopts by reference the ANSI C2-2002 National Electrical Safety Code (NESC), 2002 Edition. The National Electric Safety Code, 2002 Edition, is published by the Institute of Electrical and Electronics Engineers, Inc., and is available from the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, New York, NY 10016-5997 and may be ordered by calling 1-800-678-IEEE. All electrical and telephone corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of the NESC. (5-3-03)

[Amended, G.O. 194; amended, 31-1101-0201.]

102. -- 200. (RESERVED).

RULES 201 THROUGH 300 – TRANSPORTATION OF NATURAL GAS BY PIPELINES – LIQUEFIED NATURAL GAS FACILITIES – TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE – NATIONAL FUEL GAS CODE – UNIFORM MECHANICAL CODE

201. FEDERAL REGULATIONS – 49 C.F.R. PARTS 191, 192, 193, 195 AND 199 (Rule 201).

The Commission adopts by reference Parts 191, 192, 193, 195, and 199, Title 49, the Code of Federal Regulations (October 1, 2004), except that federal accident reporting requirements contained in the rules adopted by reference in Rule 201 are replaced for state reporting purposes by orders of the Commission or rules of the Commission. These regulations are found in the Code of Federal Regulations, available from the, U.S. Government Printing Office, Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954. The incorporated CFR Parts are also available in electronic format at www.access.gpo.gov/nara. All gas and pipeline corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of these federal regulations adopted by reference. (4-6-05)

[Adopted, G.O. 165; G.O. 171; G.O. 185; amended, G.O. 194; amended, G.O. 206; amended, 31-1101-0201; amended, 31-1101-0401.]

Federal Statutory Reference: 49 C.F.R. Parts 191, 192, 193, 195, 199.

202. INTERNATIONAL FUEL GAS CODE (IFGA) (Rule 202).

01. Adoption by Reference. The Commission adopts by reference the International Fuel Gas Code, 2003 Edition and the errata dated April 23, 2003. The International Fuel Gas Code is published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041. The Code is available from the Code Council and may be ordered online at www.iccsafe.org. Telephone orders may be placed by calling toll-free 800-284-4406. (3-20-04)

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ADMINISTRATIVE CODE

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CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER b: PROVISIONS APPLICABLE TOMORE THAN ONE KIND OF UTILITY
PART 305 CONSTRUCTION OF ELECTRIC POWER AND COMMUNICATION LINES

The General Assembly's Illinois Administrative Code database includes only those rulemakings that have been permanently adopted. This menu will point out the Sections on which an emergency rule (valid for a maximum of 150 days, usually until replaced by a permanent rulemaking) exists. The emergency rulemaking is linked through the notation that follows the Section heading in the menu.

AUTHORITY: Implementing Section 8-505 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/8-505 and 10-101].

SOURCE: Effective June 1, 1963; rules repealed at 8 Ill. Reg. 19750, effective October 1, 1984; new Part adopted at 8 Ill. Reg. 19943, effective October 1, 1984; amended at 9 Ill. Reg. 11803, effective July 25, 1985; amended at 16 Ill. Reg. 6180, effective April 15, 1992; amended at 17 Ill. Reg. 22043, effective February 15, 1994; amended at 27 Ill. Reg. 5720, effective June 15, 2003.

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SECTION 305.10 POLICY

Section 305.10 Policy

The purpose of this Part is the practical safeguarding of persons during the installation, operation, or maintenance of electric supply and communication lines and their associated equipment. It contains minimum requirements considered necessary for the safety of employees and the public.

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SECTION 305.20 SCOPE AND INCORPORATION BY REFERENCE OF PORTIONS OF THE NATIONAL ELECTRICAL SAFETY CODE (NESC)

Section 305.20 Scope and Incorporation by Reference of Portions of the National Electrical Safety Code (NESC)

a) This Part shall apply to electric utilities and those telecommunications carriers subject to Section 8-505 of the Public Utilities Act [220 ILCS 5/8-505].

b) The Illinois Commerce Commission adopts as its rules the following portions of the National Electrical Safety Code C2-2002 (2002 edition, approved June 4, 2001, published by the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, New York NY 10016-5997):

1) Section 2 (Definitions of Special Terms);

2) Section 9 (Grounding Methods of Electric Supply and Communications Facilities);

3) Part 2 (Sections 20-27: Safety Rules for the Installation and Maintenance of Overhead Electric Supply and Communication Lines); and

4) Part 3 (Sections 30-39: Safety Rules for the Installation and Maintenance of Underground Electric Supply and Communication Lines).

c) No incorporation in this Part includes any later amendment or edition.

(Source: Amended at 27 Ill. Reg. 5720, effective June 15, 2003)

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SECTION 305.30 GENERAL RULES

Section 305.30 General Rules

All electric supply and communication lines and equipment shall be designed, constructed and maintained to meet the requirements of this Part to enable service to be safe, adequate and dependable. For all particulars not specified in this Part, construction and maintenance should be done in accordance with accepted engineering practices for the given local conditions.

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SECTION 305.40 APPLICATION

Section 305.40 Application

a) New Installation and Extensions
These rules shall apply to all new installations and extensions, except that they may be waived or modified by the Illinois Commerce Commission. Instances of waiver or modification would include, but not be limited to, space limitations, temporary construction, or changes in technology. When the Commission waives or modifies these rules, it shall approve equivalent safety measures, including special working methods.

b) Existing Installations

1) Existing installations including maintenance replacements which comply with the Commission's rules which were in effect at the time of original installation need not be modified to comply with this Part except as may be required for safety reasons as directed by the Commission.

2) Where an existing installation meets, or is altered to meet, the requirements of this Part, such installation is considered to be in compliance with this Part and is not required to comply with any previously adopted rules of the Commission that have been superseded by this Part.

3) Where conductors or equipment are added, altered, or replaced on an existing structure, the structure or the facilities on the structure need not be modified or replaced if the resulting installation will be in compliance with:

A) The rules which were in effect at the time of the original installation.;

B) The rules in effect at the time of a previous modification; or

C) The rules currently in effect.

c) Effective Date. This Part shall apply to new installations and extensions

where design was started and approval given by the company after October 1, 1984.

(Source: Amended at 17 Ill. Reg. 22043, effective December 15, 1993)

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SECTION 305.50 CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

Section 305.50 Certificates of Public Convenience and Necessity

An application for a Certificate of Public Convenience and Necessity to construct, operate and maintain a new electric supply line or communication line shall be accompanied by a plat of suitable scale to clearly show:

a) The location of the proposed line along its entire length.

b) The location of railroad tracks, and electric supply and communication lines which will be crossed by the proposed new lines.

c) The location of all other electric supply and communication lines that are located within one-half mile of the route of the proposed new line.

d) The names of the utilities owning or operating railroad, electric supply and communication lines, shown on the plat in conformance with subsections (b) and (c) above.

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SECTION 305.60 NOTIFICATION PROCEDURE FOR APPLICATIONS

Section 305.60 Notification Procedure for Applications

Notice of the filing of an application for a Certificate of Public Convenience and Necessity to construct new line facilities or an application for authority to reconstruct, alter or remove existing line facilities shall be given by the applicant at the time of filing its application with the Commission to all other utilities whose lines will be crossed by the proposed new or reconstructed line facilities, or whose lines will be paralleled within 200 feet by such new or reconstructed line facilities. A list of all utilities to whom such notice were sent, including their addresses, shall accompany the application.

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SECTION 305.70 ADVANCE NOTICE AND COOPERATION

Section 305.70 Advance Notice and Cooperation

a) Railroad Crossings. An electric or communication utility planning to cross the tracks of a railroad, either overhead or underground, shall give notice of its intention to do so. Unless other mutual arrangements are made in conformity with Section 305.80, such notice shall be given by registered mail at least 20 calendar days in advance of the commencement of construction. Such notice shall include information regarding the location and general plan for the crossing, planned clearances, and such other pertinent information in sufficient detail to determine whether the proposed construction conforms with the requirements of this Part. In a case of emergency where the required notice would work a hardship on the company planning the crossing, the involved parties shall cooperate so as to avoid unnecessary delay in construction of the crossing.

b) Overhead Line Crossing. An electric or communication utility planning a crossing over or under an existing line, or general reconstruction of an existing crossing, shall give notice of its intention to do so. Unless other mutual arrangements are made in conformity with Section 305.80, such notice shall be given by registered mail at least 20 calendar days in advance of the commencement of construction. All parties involved in such planned crossing construction or reconstruction shall cooperate in coordinating plans for future construction.

c) Inductive Coordination.
Although the Commission has no specific rules covering inductive coordination, the Commission retains full jurisdiction of such matters as location, design, construction, operation and maintenance of power and communication circuits, where consideration of these or other conditions may be necessary in order to prevent or eliminate inductive interference.

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SECTION 305.80 INTERCHANGE DATA

Section 305.80 Interchange Data

To assist in promoting conformity with these rules, a procedure or plan should be instituted between all utilities whose facilities may occupy the same territory so that it will provide for the exchange of pertinent data and information, including data relative to proposed and existing construction, and changes in operating conditions which may affect or be likely to affect situations of proximity.

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SECTION 305.90 COORDINATED LOCATIONS OF LINES

Section 305.90 Coordinated Locations of Lines

a) General Location. Utilization of highways is essential to the economical and efficient extension, operation and maintenance of power and communication services. To avoid unduly increasing the number or difficulty of proximity situations incident to the use of the same highway by two or more different types or kinds of facilities, all lines should be located as follows: Where communication circuits and electric circuits on the same highway are not to occupy joint structures or where either kind of a circuit is alone on a highway, all communication circuits should be placed on one side of the highway and all electric circuits should be placed on the other side, so that one side of any section of a highway will be available as the communication side and one side as the power side.

b) Other Rights-of-Way. Subsection (a) shall also apply to other rights-of-way. Situations should also be avoided whereby the reasonable use of parcels of property is restricted by the planned route traversing the property.

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SECTION 305.100 OVERBUILDING OR UNDERBUILDING

Section 305.100 Overbuilding or Underbuilding

Overbuilding or underbuilding of one pole line by another pole line should be avoided. Where it is necessary for the lines to occupy the same side of the highway, the use of a single pole line is preferable.

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SECTION 305.110 EXCEPTIONS AND ADDITIONS TO NESC PROVISIONS

Section 305.110 Exceptions and Additions to NESC Provisions

a) Footnotes and notes which reference provisions of the NESC which have not been expressly adopted by the Illinois Commerce Commission shall not be construed to incorporate such provisions into this Part.

b) Table A of this Part provides minimum vertical separation between crossarms for the safety of electric and communication employees. Said table will be used in conjunction with Rule 238 in addition to Table 238-1 of the NESC.

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SECTION 305.120 INTENT

Section 305.120 Intent

a) Statements in this Part which are to be regarded as mandatory are characterized by the use of the word "shall." Statements in this Part which are advisory in nature, to be followed insofar as practical, are indicated by the word "should." Statements in the NESC which are advisory in nature, to be followed insofar as practical, are indicated as "RECOMMENDATIONS."

b) Notes contained herein other than footnotes to tables, are for information purposes only and are not to be considered as mandatory or as part of the code requirements.

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SECTION 305.130 EXEMPTION

Section 305.130 Exemption

If exemption from any of the requirements herein is desired in any particular case, the Commission will consider the application of a public utility for such exemption when accompanied by a full statement setting forth the conditions existing and the reasons why such exemption is desired. Exemptions will be governed by the same standards applicable to waivers and modifications in Section 305.40(a). It is understood that any exemption so granted shall apply only to the particular case covered by the application, and exemption shall not be extended to other cases unless specifically granted in the Commission's order.

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SECTION 305.TABLE A VERTICAL SEPARATION OF CROSSARMS CARRYING CONDUCTORS

Section 305.TABLE A Vertical Separation of Crossarms Carrying Conductors

1. BASIC SEPARATION.
The separations given in the following table are for crossarms carrying conductors of 0 to 50,000 volts attached to fixed supports.

2. INCREASED SEPARATION FOR VOLTAGES EXCEEDING 50,000 VOLTS.
For voltages greater than 50,000 volts the clearances in the table below shall be increased at the rate of 0.4 inch per 1,000 volts of the excess.

	Supply conductors: preferably at higher levels [6]				
	Open wires, 0 to 750 volts; cables, having effectively grounded continuous metal sheath, or insulated conductors supported on and cabled together with an effectively grounded messenger, all voltages	750 to 8,700 volts	8,700 to 15,000 volts	15,000 to 50,000 volts	
				Same utility	Different utilities
Communication conductors:	Feet	Feet	Feet	Feet	Feet
General	[1, 2] 4	4	6		6
Use in operation of supply lines	2	[3] 2	4	4	6
Supply conductors:					
0 to 750 volts	2	[4] 2	4	4	6
750 volts to 8,700 volts		[4] 2	4	4	6
8,700 volts to 15,000 volts:					
If worked on alive with long-handled tools and adjacent circuits are neither killed nor covered with shields or protectors			4	4	6
If not worked on alive except when adjacent circuits (either above or below) are killed or covered by shields or protectors, or by the use of long-handled tools not requiring linemen to					

go								
between live wires					2	5 4	5	4
Exceeding 15,000 volts, but								
not exceeding 50,000 volts						5 4	5	4

1 Where supply circuits of 550 volts or less, with transmitted, power of 3,200 watts or less, are run below communication circuits in accordance with Rule 220B2 the clearance may be reduced to 2 feet.

2 In localities where the practice has been established or placing on jointly used poles, crossarms carrying supply circuits of less than 300 volts to ground and crossarms carrying communication circuits at a vertical separation less than specific in the table, such existing construction may be continued until the said poles are replaced provided that –

The minimum separation between existing crossarms is not less than 2 feet, and that –

Extensions to the existing construction shall conform to the clearance requirements specified in table 11.

When communication conductors are all in cable, a supply crossarm carrying only wires of not more than 300 volts to ground may be placed at not less than 2 feet above the point of attachment of the cable to the pole provided that –

The nearest supply wire on such crossarm shall be at least 30 inches horizontally from the center of the pole, and that –

The cable be placed so as not otherwise to obstruct the climbing space.

3 This shall be increased to 4 feet when the communication conductors are carried above supply conductors unless the communication-line-conductor size is that required for grade C supply lines.

4 Where conductors are operated by different utilities, a minimum vertical spacing of 4 feet is recommended.

5 These values do not apply to adjacent crossarms carrying phases of the same circuit or circuits.

6 A conductor which is effectively grounded throughout its length, and is associated with a supply circuit of 0 to 22,000 volts may have the clearance specified for cables having effectively grounded continuous metal sheath or messenger.

Rules of
Department of Economic Development
Division 240—Public Service Commission
Chapter 18—Safety Standards

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 18—Safety Standards

4 CSR 240-18.010 Safety Standards for Electric Utilities, Telecommunications Companies and Rural Electric Cooperatives

PURPOSE: This rule prescribes minimum safety standards relating to the operation of electric utilities, telecommunications companies and rural electric cooperatives. Adoption of this rule will not only inform the regulated utilities, to which it applies, of the minimum safety standards required by the commission but will also be of assistance to the commission staff in carrying out its assigned duties.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) The commission adopts as its rule and incorporates by reference, Parts 1, 2 and 3 and Sections 1, 2 and 9 of the *American National Standard, National Electrical Safety Code* (NESC); 2002 Edition as approved by the American National Standards Institute on June 14, 2001. The NESC is published by the Institute of Electrical and Electronics Engineers, Inc., as the minimum safety standards relating to the operation of electric utilities and telecommunications companies and rural electric cooperatives. The NESC is composed of four (4) different parts and four (4) sections, each of which pertain to different aspects of the electric and telecommunications industries. Part 1 specifies rules for the installation and maintenance of equipment normally found in electric generating plants and substations. Part 2 pertains to safety rules for overhead electric and communication lines. Part 3 contains safety rules for underground electric and communication lines. Section 1 is an introduction to the NESC, Section 2 defines special terms and Section 9 requires certain grounding methods for electric and communications facilities.

(2) All electric utilities and telecommunications companies and rural electric cooperatives subject to regulation by this commission pursuant to Chapters 386, 392–394, RSMo shall be required to adhere to the safety standards established by this rule.

(3) Incident reporting requirements for electric utilities and rural electric cooperatives are found in 4 CSR 240-3.190(4).

AUTHORITY: sections 386.310 and 394.160, RSMo 2000. Original rule filed March 15, 1978, effective Oct. 2, 1978. Amended: Filed April 8, 1981, effective Oct. 15, 1981. Amended: Filed Feb. 9, 1984, effective June 15, 1984. Amended: Filed June 12, 1987, effective Sept. 15, 1987. Amended: Filed Jan. 5, 1990, effective April 13, 1990. Amended: Filed March 23, 1993, effective Oct. 10, 1993. Amended: Filed Aug. 27, 1999, effective Feb. 29, 2000. Amended: Filed Oct. 14, 2003, effective April 30, 2004.*

**Original authority: 386.310, RSMo 1939, amended 1979, 1989, 1996 and 394.160, RSMo 1939, amended 1979.*

Rules of
Department of Economic Development
Division 240—Public Service Commission
Chapter 18—Safety Standards

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FOCUS – 1 of 7 DOCUMENTS

NEW JERSEY ADMINISTRATIVE CODE

*** THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE ***
*** NEW JERSEY REGISTER, VOL. 38. NO. 1, JANUARY 03, 2006 ***

TITLE 14. BOARD OF PUBLIC UTILITIES
CHAPTER 5. ELECTRIC SERVICE
SUBCHAPTER 1. PLANT

N.J.A.C. 14:5–1.1 (2006)

§ 14:5–1.1 Plant construction

The construction and installation of plant and facilities of electric utilities must be in accordance with *N.J.A.C. 14:3–2.1* and, except with respect to the protection and separation of conductors buried in earth, must be in accordance with the applicable requirements of the National Electrical Code and the National Electrical Safety Code in effect at the time of construction. When and if any controversy arises as to the necessity for adopting specifications calling for construction of a higher standard, the matter may be referred to the Board for determination.

CASE NOTES:

Electric utility practiced prudent field management in choosing site for proposed distribution substation. Matter of Appeal of Atlantic City Elec. Co., 93 N.J.A.R.2d (BRC) 75.

Rule R8-26. Safety rules and regulations.

The current rules and regulations of the American National Standards Institute (ANSI) entitled "National Electrical Safety Code" are hereby adopted by reference as the electric safety rules of this Commission and shall apply to all electric utilities which operate in North Carolina under the jurisdiction of the Commission.

(NCUC Docket No. M-100, Sub 5, 7/15/65; NCUC Docket No. M-100, Sub 6, 11/4/68; NCUC Docket No. M-100, Sub 89, 12/8/81; 4/9/84; 6/23/87; 12/5/89; 12/8/92; 1/7/97; 04/02/02.)

The Oregon Administrative Rules contain OARs filed through December 15, 2005

PUBLIC UTILITY COMMISSION

DIVISION 24

SAFETY STANDARDS

General

860-024-0000

Applicability of Division 024

Unless otherwise noted, the rules in this Division apply to every operator, as defined in OAR 860-024-0001.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.039, ORS 757.649, ORS 759.030, ORS 759.040 & ORS 759.045
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & cert. ef. 11-20-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2000, f. & cert. ef. 8-23-00; PUC 23-2001, f. & cert. ef. 10-11-01

860-024-0001

Definitions for Safety Standards

For purposes of this Division, except when a different scope is explicitly stated:

(1) "Facility" means any of the following lines or pipelines including associated plant, systems, rights-of-way, supporting and containing structures, equipment, apparatus, or appurtenances:

(a) A gas pipeline subject to ORS 757.039; or

(b) A power line or electric supply line subject to ORS 757.035; or

(c) A telegraph, telephone, signal, or communication line subject to ORS 757.035.

(2) "Government entity" means a city, a county, a municipality, the state, or other political subdivision within Oregon.

(3) "Operator" means every person as defined in ORS 756.010, public utility as defined in ORS 757.005, telecommunications utility as defined in ORS 759.005, telecommunications carrier as defined in ORS 759.400, telecommunications provider as defined in OAR 860-032-0001(10), consumer-owned utility as defined in ORS 757.270, association, cooperative, or government entity and their agents, lessees, or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership, or control of any facility within Oregon.

(4) "Reporting Operator" means an operator that:

(a) Serves 20 customers or more within Oregon; or

(b) Is an electricity service supplier as defined in OAR 860-038-0005 and serves more than one retail electricity customer.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.039, ORS 757.649, ORS 758.215, ORS 759.005 & ORS 759.045
Hist.: PUC 2-1996, f. & cert. ef. 4-18-96 (Order No. 96-102); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 23-2001, f. & cert. ef. 10-11-01

860-024-0005

Maps and Records

(1) Each utility shall keep on file current maps and records of the entire plant showing size, location, character, and date of installation of major plant items.

(2) Upon request, each utility shall file with the Commission an adequate description or maps to define the territory served. All maps and records which the Commission may require the utility to file shall be in a form satisfactory to the Commission.

Stat. Auth.: ORS 183, ORS 756 & ORS 757
Stats. Implemented: ORS 756.040 & ORS 757.020
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98

860-024-0007

Location of Underground Facilities

An operator and its customers shall comply with requirements of OAR chapter 952 regarding the prevention of damage to underground facilities.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 757.542 – ORS 757.562, ORS 757.649 & ORS 759.045
Hist.: PUC 5-1988, f. & cert. ef. 3-8-88 (Order No. 88-244); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 23-2001, f. & cert. ef. 10-11-01

Electric and Communication

860-024-0010

Construction, Operation, and Maintenance of Electrical Supply and Signal Lines

Every operator shall construct, operate, and maintain electrical supply and communication lines in compliance with the standards prescribed by the **2002 Edition of the National Electrical Safety Code** approved June 14, 2001, by the American National Standards Institute.

[Publications: Publications referenced are available from the Commision.]

Stat. Auth.: ORS 183, ORS 756, & ORS 757 & ORS 759
Stats. Implemented: ORS 757.035
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 173, f. & ef. 1-14-76 (Order No. 76-037); PUC 1-1978, f. 1-13-78, ef. 2-13-78 (Order No. 78-076); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 6-1990, f. & cert. ef. 5-25-90 (Order No. 90-833); PUC 11-1993, f. & cert. ef. 6-23-93 (Order No. 93-809; PUC 13-1994, f. & cert. ef. 8-31-94 (Order No. 94-1243); PUC 7-1997, f. & cert. ef. 2-6-97; PUC 9-2002, f. & cert. ef. 2-26-02

860-024-0015

Ground Return

Every operator with either alternating or direct current power lines or equipment within Oregon may use a connection to ground only for protection purposes. A ground connection shall not be used for the purpose of providing a return conductor for power purposes.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 757.035, ORS 757.649 & ORS 759.045
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 23-2001, f. & cert. ef. 10-11-01

860-024-0017

Vegetation Pruning Standards

An operator that is an electric utility as defined in ORS 758.505 shall perform tree and vegetation work associated with line clearance in compliance with the American National Standard for Tree Care Operations, ANSI A300 (Part 1)-2001 Pruning, approved May 22, 2001, by the American National Standards Institute.

[Publications: Publications referenced are available from the Commision.]

Stat. Auth.: ORS 756, ORS 757 & ORS 758
Stat. Implemented: HB 2493 & ORS 757.035
Hist.: PUC 16-2002, f. & cert. ef. 6-14-02

Gas

860-024-0020

Gas Pipeline Safety

Every gas operator shall construct, operate, and maintain natural gas and other gas facilities in compliance with the standards prescribed by:

(1) 49 CFR, Part 191, and amendments through No. 14 -- Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports in effect on July 13, 1998.

(2) 49 CFR, Part 192, and amendments through No. 98 -- Transportation of Natural and Other Gas by Pipeline; Minimum Safety Standards in effect on September 9, 2004.

(3) 49 CFR, Part 199, and amendments through No.19 -- Control of Drug and Alcohol Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations in effect on September 11, 2001.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 757.039
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 172, f. & ef. 1-14-76 (Order No. 76-036); PUC 180, f. 4-8-77, ef. 5-1-77 (Order No. 77-232); PUC 2-1978, f. & ef. 3-16-78 (Order No. 78-158); PUC 6-1980, f. & ef. 10-22-80 (Order No. 80-777); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 18-1984, f. & ef. 9-4-84 (Order No. 84-685); PUC 4-1986, f. & ef. 5-5-86 (Order No. 86-456); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 16-1989, f. & cert. ef. 11-22-89 (Order No. 89-1529); PUC 8-1992, f. & cert. ef. 5-13-92 (Order No. 92-618 & 92-677); PUC 14-1994, f. & cert. ef. 10-20-94 (Order No. 94-1533); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 19-1998, f. & cert. ef. 11-18-98; PUC 22-2003, f. & cert. ef. 11-28-03; PUC 3-2005, f. & cert. ef. 6-3-05

860-024-0021

Liquefied Natural Gas Safety

Every gas operator shall construct, operate, and maintain liquefied natural gas facilities in compliance with the standards prescribed by:

(1) 49 CFR, Part 191, and amendments through No. 14 -- Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports in effect on July 13, 1998.

(2) 49 CFR, Part 193, and amendments through No. 18 Liquefied Natural Gas Facilities; Minimum Safety Standards in effect on April 9, 2004.

(3) 49 CFR, Part 199, and amendments through No. 19 -- Control of Drug and Alcohol Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations in effect on September 11, 2001.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 757.039

Hist.: PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 4-1986, f. & ef. 5-5-86 (Order No. 86-456); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 16-1989, f. & cert. ef. 11-22-89 (Order No. 89-1529); PUC 8-1992, f. & cert. ef. 5-13-92 (Order No. 92-618 & 92-677); PUC 14-1994, f. & cert. ef. 10-20-94 (Order No. 94-1533); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 19-1998, f. & cert. ef. 11-18-98; PUC 22-2003, f. & cert. ef. 11-28-03; PUC 3-2005, f. & cert. ef. 6-3-05

Steam and Hot Water

860-024-0025

Steam Heat -- Construction, Operation, and Maintenance of Steam and Hot Water Transmission and Distribution Systems

A steam heat public utility shall construct, operate, and maintain steam and hot water transmission and distribution systems in accordance with the American Society of Mechanical Engineers Code for Pressure Piping, Section B31.1, 1989 Edition, an American National Standard.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & ORS 756
Stats. Implemented: ORS 756.040
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 10-1991, f. & cert. ef. 12-5-91 (Order No. 91-1603); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 23-2001, f. & cert. ef. 10-11-01

860-024-0050

Accident Reports

(1) As used in this rule:

(a) "Serious injury to person" means, in the case of an employee, an injury which results in hospitalization. In the case of a nonemployee, "serious injury" means any contact with an energized high-voltage line, or any accident which results in hospitalization. Treatment in an emergency room is not hospitalization.

(b) "Serious injury to property" means:

(A) Damage to operator and nonoperator property exceeding $25,000; or

(B) In the case of a gas operator, damage to property exceeding $5,000; or

(C) In the case of an electricity service supplier (ESS) as defined in OAR 860-038-0005, damage to ESS and non-ESS property exceeding $25,000 or failure of ESS facilities that causes or contributes to a loss of energy to consumers; or

(D) Damage to property which causes a loss of service to over 500 customers (50 customers in the case of a gas operator) for over two hours (five hours for an electric operator serving less than 15,000 customers) except for electric service loss that is restricted to a single feeder line and results in an outage of less than four hours.

(2) Except as provided in section (5) of this rule, every reporting operator shall give immediate notice by telephone, by facsimile, by electronic mail, or personally to the Commission, of accidents attended by loss of life or limb, or serious injury to person or property, occurring in Oregon upon the premises of or directly or indirectly arising from or connected with the maintenance or operation of a facility.

(3) Except as provided in section (5) of this rule, every reporting operator shall, in addition to the notice given in section (2) of this rule for an accident described in section (2), report in writing to the Commission within 20 days of the occurrence. In the case of injuries to employees, a copy of the accident report form that is submitted to Oregon OSHA, Department of Consumer and Business Services, for reporting accident injuries, will normally suffice for a written report. In the case of a gas operator, copies of accident or leak reports submitted under 49 CFR Part 191 will normally suffice.

(4) An accident report filed by a public or telecommunications utility in accordance with ORS 654.715 cannot be used as evidence in any action for damages in any suit or action arising out of any matter mentioned in the report.

(5) A Peoples Utility District (PUD) is exempt from this rule if the PUD agrees, by signing an agreement, to comply voluntarily with the filing requirements set forth in (2) and (3).

(6) Gas operators have additional incident and condition reporting requirements set forth in OARs 860-024-0020 and 860-024-0021.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, ORS 654, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 654.715, ORS 756.040, ORS 756.105, ORS 757.035, ORS 757.039, ORS 757.649, ORS 759.030,ORS 759.040 & ORS 759.045
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 21-1985, f. & ef. 11-25-85 (Order No. 85-1130); PUC 12-1989, f. & cert. ef. 8-11-89 (Order No. 89-946); PUC 4-1992, f. & ef. 2-14-92 (Order No. 92-234); PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-028-0005 & 860-034-0570

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Utah Administrative Rules

R746-310-5. Design, Construction and Operation of Plant.

Facilities owned or operated by utilities and used in furnishing electricity shall be designed, constructed, maintained and operated so as to render adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the hazards to which employees, customers and others may be subjected from the utility's equipment and facilities.

Database updated through 22:2 V.A.R. October 3, 2005 (see cumulative table) previous | next

20VAC5-325-30. Installation of utility lines.

All operators, as defined in §56-265.15 of the Code of Virginia, having the right to install underground utility lines, as defined in §56-265.15 of the Code of Virginia, except interstate gas pipelines subject to regulation by the United States Department of Transportation, shall install such underground utility lines in accordance with the applicable standards as set forth in §56-257 of the Code of Virginia in effect at the time of installation of such underground utility lines. If there is a conflict among any of the standards the most stringent standard shall be applied, unless the conflict can otherwise be resolved by the operators involved without violating applicable law or regulation. Reference to standards set out in §56-257 of the Code of Virginia shall not change or extend their application but shall make them subject to enforcement by the commission as set forth in Part III (20VAC5-325-60 et seq.) of this chapter.

Statutory Authority

§§12.1-13 and 56-265.15 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 17, Issue 23, eff. July 1, 2001.

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§ 56-257. Manner of installing underground utility lines.

A. Every operator, as defined in § 56-265.15, having the right to install underground utility lines, as defined in § 56-265.15, except interstate gas pipelines subject to regulation by the U.S. Department of Transportation, shall install such underground utility lines in accordance with accepted industry standards. Such standards shall include, as applicable, standards established by the National Electric Safety Code, the Commission's pipeline safety regulations, the Department of Health's waterworks regulations (12 VAC 5-590-10 et seq.), and standards established by the Utility Industry Coalition of Virginia.

B. The Commission shall promulgate any rules or regulations necessary to enforce the provisions of this section as to those operators that do not comply with such accepted industry standards.

C. This section shall not authorize the Commission to order action by, or impose penalties on, any county, city or town. However, the Commission shall inform counties, cities and towns of alleged violations by the locality of the accepted industry standards or regulations adopted under this section and, at the request of the locality, suggest corrective action.

(Code 1919, § 4059; 1996, c. 278; 2000, c. 779.)

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§ 56-46.2. Construction of electrical transmission lines.

The construction of all overhead electrical transmission lines shall adhere to the standards set forth in the National Electrical Safety Code. The Commission shall, upon receipt of a written complaint concerning the lack of compliance with these standards in the construction of a particular transmission line, investigate the situation and, if appropriate, exercise its powers granted under § 12.1-12 to enforce adherence to the standards.

(1985, c. 187.)

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480-120-401 << 480-120-402 >> 480-120-411

WAC 480-120-402
Safety.

The plant and all facilities of utilities must be constructed and installed in conformity with go practice and comply with the minimum standards as set out in the National Electric Safety Co about this standard regarding the version adopted and where to obtain it is set forth in WAC (Adoption by reference). All instrumentalities and equipment must be installed and maintaine consideration to the safety of the customers, employees and general public. Hazardous conc endangering persons, property, or the continuity of service when found, reported or known to expeditiously corrected.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-402, filed 1/10/05, effective 2/10/05; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120 12/12/02, effective 7/1/03.]

37-3-114. Safety standards.

(a) All instrumentalities, equipment, plant and facilities furnished, employed or used by any public utility, shall in all respects be adequate and efficient, and the construction, operation and use thereof, shall be such as shall prevent injury to property, and as shall promote the safety, health, comfort, and convenience of its patrons, employees and the public, and to this end, the commission may make rules and regulations governing the construction, maintenance and operation of telephone, telegraph, trolley, electric light and power lines hereafter built within this state, and shall by rule adopt as the standard of such construction, operation and maintenance the provisions of the current edition of the National Electrical Safety Code; provided that when electric light and power lines use Y-connected circuits with neutral conductors effectively grounded throughout their length, minimum vertical clearance of wires or neutral conductors over ground or rails shall be determined by the voltage between wires and ground, if such voltage does not exceed fifteen thousand (15,000) volts. Said commission shall also have the power to direct the manner by which all utilities shall cross public highways and other utilities and by which public highways shall cross the utilities and to prescribe methods of approach and crossing that shall secure safety to the public; provided, however, that with respect to approaches and crossings of overhead lines, the provisions of the current edition of the National Electrical Safety Code above prescribed shall apply, except as provided herein with respect to Y-connected circuits with neutral conductors effectively grounded throughout their length where the voltage does not exceed fifteen thousand (15,000) volts. At every such crossing, in case the persons interested do not themselves agree, it shall be the duty of the commission to apportion between the parties, in accordance with justice, the costs and expenses of installing and maintaining such crossings. In case expense is apportioned to be paid by a public highway the portion so to be paid by such highway shall be paid by the city or town in case the crossing line is within the boundaries of a city or town, and by the county in which the crossing is situated in case the same is not within any city or town. Provided that all such equipment, plant, and facilities shall be maintained in such working condition that will provide a minimum of interference with radio and television reception to residents and highway users in the immediate area of such equipment, plant, and facilities.

(b) This section shall not be construed as creating neither prohibition nor obligation or duty of inspection or maintenance by an electric or telecommunications public utility for facilities or equipment not owned by the public utility.

ARTICLE 3
HIGH VOLTAGE LINE SAFETY

37-3-301. Short title.

This act shall be known and may be cited as the "Wyoming High Voltage Power Lines and Safety Restrictions Act."

37-3-302. Definitions.

(a) As used in this act:

(i) "Authorized person" means:

(A) An employee of a public utility which produces, transmits or delivers electricity;

(B) An employee of a public utility which provides and whose work relates to communication services or state, county or municipal agencies which have authorized circuit construction on or near the poles or structures of a public utility;

(C) An employee of an industrial plant whose work relates to the electrical system of the industrial plant;

(D) An employee of a cable television or communication services company or an employee of a contractor of a cable television or communication services company if specifically authorized by the owner of the poles to make cable television or communication services attachments; or

(E) An employee or agent of state, county or municipal agencies which have or whose work relates to overhead electrical lines or circuit construction or conductors on poles or structures of any type.

(ii) "High voltage" means voltage in excess of six hundred (600) volts measured between conductors or between a conductor and the ground;

(iii) "Overhead line" means all bare or insulated electrical conductors installed above ground;

(iv) "Person" or "business entity" means those parties who contract to perform any function or activity upon any land, building, highway or other premises, excluding those parties providing emergency services including emergency rescue operations and fire protection services;

(v) "Public utility" means a public utility as defined in W.S.

37-1-101(a)(vi) which owns or operates a high voltage overhead line;

(vi) "This act" means W.S. 37-3-301 through 37-3-306.

37-3-303. Activity near overhead line; safety restrictions.

(a) Unless danger against contact with high voltage overhead lines has been effectively guarded against as provided by W.S. 37-3-304 a person or business entity, individually or through an agent or employee or as an agent or employee, shall not:

(i) Require any other person to perform any act if at any time during the performance of the act it is possible that the actor could move or be moved closer to any high voltage overhead line or if it is possible that any part of any tool or material used by the actor could be moved closer to any high voltage overhead line during the performance of the act than the following clearances:

(A) For lines rated fifty (50) kilovolts or less, six (6) feet of clearance;

(B) For lines rated over fifty (50) kilovolts, six (6) feet plus four-tenths (.4) of an inch for each kilovolt over fifty (50) kilovolts.

(ii) Operate any mechanical equipment or hoisting equipment or any load of equipment, any part of which is capable of vertical, lateral or swinging motion closer to any high voltage overhead line than the following clearances:

(A) For lines rated fifty (50) kilovolts or less, ten (10) feet of clearance;

(B) For lines rated over fifty (50) kilovolts, ten (10) feet plus four-tenths (.4) of an inch for each kilovolt over fifty (50) kilovolts.

37-3-304. Activity in close proximity to lines; clearance arrangements; procedure; payment; notice.

(a) If any person or business entity desires to temporarily carry on any act in closer proximity to any high voltage overhead line than permitted by this act, the person or business entity responsible for performing the work shall promptly notify the appropriate public utility and shall ask the public utility for assistance. An agent or employee of the public utility shall prepare and sign a memorandum stating the public utility received a request for assistance. The person or business entity may perform the work only after developing satisfactory safety arrangements, including

coordination of work and construction schedules, with the public utility. Arrangements may include placing temporary mechanical barriers to prevent contact between material, equipment or persons and the high voltage overhead lines or temporary shut down and grounding or temporary relocation or raising of the high voltage overhead lines.

(b) Except where the public utility has installed lines within ten (10) feet of an existing fixture or structure the person or business entity responsible for performing the work in the vicinity of the high voltage overhead lines shall pay the public utility's actual expenses in providing safety arrangements. The public utility is not required to begin the safety arrangements until a written agreement for payment has been made.

(c) The public utility shall begin the safety arrangements according to the agreement signed pursuant to subsections (a) and (b) of this section.

37-3-305. Indemnification.

If a violation of this act results in physical or electrical contact with any high voltage overhead line, the person or business entity violating this act is liable to the public utility for all damages to the facilities and all costs and expenses, including damages to third parties, incurred by the public utility as a result of the contact.

37-3-306. Exemptions.

(a) This act shall not apply to:

(i) Construction, reconstruction, operation or maintenance by an authorized person of overhead electrical or communication circuits or conductors and their supporting structures or electrical generating, transmission or distribution systems or communication systems;

(ii) Any person lawfully occupying the land on which the high voltage overhead line is located and engaging in the regular and ordinary functions and activities of farming, ranching or other agricultural functions and activities.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Petition of	)	
Fibertech Networks, LLC	)	RM No. 11303
for a Rulemaking to Adopt	)	
Certain Standard Practices	)	
for Pole and Conduit Access	)	

CERTIFICATE OF SERVICE

I, Magdalene Copp, a secretary at the law office of Troutman Sanders LLP, do hereby certify that I have this 30th day of January, 2006, served by first-class mail, postage pre-paid, a copy of the foregoing Statement in Opposition of Ameren Corporation, Florida Power & Light Company, PacifiCorp, Public Service Electric and Gas Company, Southern California Edison Company, Tampa Electric Company and Virginia Electric and Power Company, on the following parties:

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